Page 1

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF OHIO

3   EASTERN DIVISION

4   ~~~~~~~~~~~~~~~~~~~~~

5   XEROX STATE &

6   LOCAL SOLUTIONS, INC.,

7

8   Plaintiff,

9

10   vs.   Case No. 1:15CV1707

11

12 CITY OF CLEVELAND, OHIO,

13

14   Defendant.

15   ~~~~~~~~~~~~~~~~~~~~~

16   Deposition of

17   MARTIN L. FLASK

18   CONFIDENTIAL

19

20   April 8, 2016

20   9:30 a.m.

21   Taken at:

21   Baker Hostetler LLP

22   127 Public Square, Suite 2000

22   Cleveland, Ohio

23

24   Christine M. Emery, Notary Public

25

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1   APPEARANCES:

2   On behalf of the Plaintiff:

3   Baker Hostetler LLP, by

4   TERRY M. BRENNAN, ESQ.

5   SAM CAMARDO, ESQ.

6   127 Public Square, Suite 2000

7   Cleveland, OH 44114

8   216-861-7485

9   tbrennan@bakerlaw.com

10   scamardo@bakerlaw.com

11

12   On behalf of the Defendant:

13   City of Cleveland Department of

14   Law, by

15   JILLIAN L. DINEHART, ESQ.

16   CONNOR NATHANSON, ESQ.

17   601 Lakeside Avenue, Room 106

18   Cleveland, OH 44114

19   216-664-3559

20   jdinehart@city.cleveland.oh.us

21   cnathanson@city.cleveland.oh.us

22   ~ ~ ~ ~ ~

23   ALSO PRESENT:

24   Wes Wadle (telephonically)

25   ~ ~ ~ ~ ~

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11

12   EXHIBIT CUSTODY

13   EXHIBITS RETAINED BY THE COURT REPORTER

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1   INDEX OF EXHIBITS

2   NUMBER   DESCRIPTION   MARKED

3   Exhibit 1   License and Service 12

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     Exhibit 3   Calendar Entry, Document 62

6   CL019

7   Exhibit 4   NPR Article................... 91

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1   MARTIN L. FLASK, of lawful age, called

2   for examination, as provided by the Federal

3   Rules, being by me first duly sworn, as

4   hereinafter certified, deposed and said as

5   follows:

6   EXAMINATION OF MARTIN L. FLASK

7   BY MR. BRENNAN:

8   Q.   Good morning, Mr. Flask.

9   A.   Good morning.

10   Q.   As I introduced myself off the

11 record, my name is Terry Brennan. I, along

12 with Sam Camardo, who is here with me, are

13 attorneys representing Xerox in the lawsuit

14 that has been filed by Xerox against the City

15 of Cleveland in Federal District Court in the

16 Northern District of Ohio, in which Xerox is

17 seeking monies pursuant to a contract between

18 Xerox and the City of Cleveland.

19   You understand that you are here

20 today to have your deposition be taken?

21   A.   Yes, I understand.

22   Q.   For purposes of the record, if you

23 could just, please, state your full name and

24 spell your last name for the record?

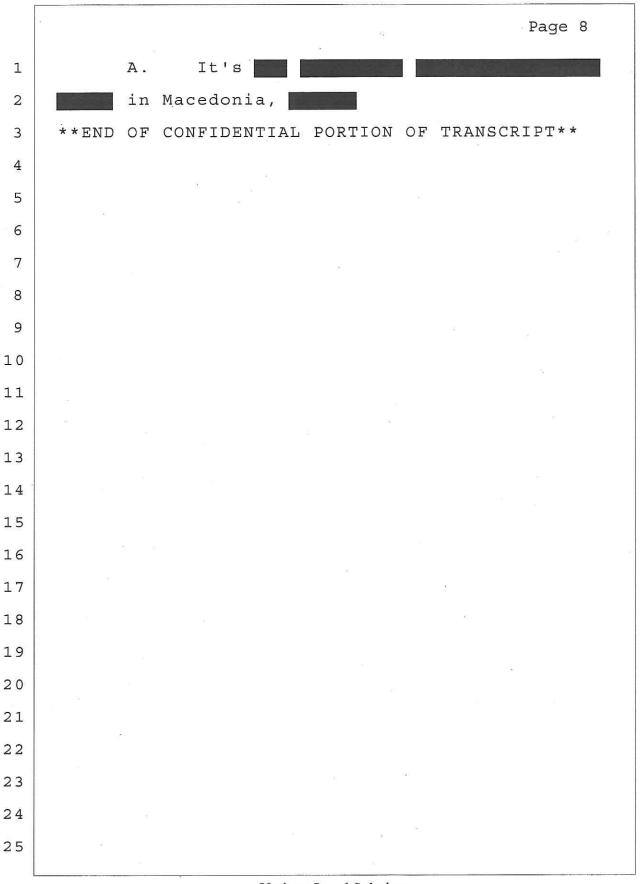25   A.   Martin, middle initial L, last name

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1   is Flask, F-L-A-S-K.

2   Q.   And, sir, what is your current

3   residential address?

4   A.   Is it relevant to this?

5   Q.   It is. There may be a point in

6   time where we need to subpoena you to testify

7   at trial.

8   A.   So the purpose of my residence is

9   for potential subpoena purposes only?

10   Q.   Correct. And we have a protective

11 order in the case so nobody is planning on

12 sharing what is public information outside of

13 attorneys.

14   MS. DINEHART: We'll object to the

15 extent that he used to be a former police

16 officer and he was subpoenaed, subject to the

17 subpoena, through the City of Cleveland and he

18 is here.

19   MR. BRENNAN: Understood.

20   Q.   But, sir, there could be a point

21 where your relationship between now and the

22 time of the trial terminate. Either because

23 you resigned from the City of Cleveland or you

24 are terminated from the City of Cleveland and

25 we would have to serve you with the subpoena

Page 7

1   directly.

2   A.   Or retire from the City of

3   Cleveland.

4   Q.   Or retire, which would be

5   fantastic.

6   So we are just asking for your

7   residential address. Again, we have a

8   protective order, we are not planning on

9   sharing it with anyone.

10   **THE FOLLOWING IS DEEMED CONFIDENTIAL AND FOR

11   ATTORNEYS' EYES ONLY**

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1   A.   It's ███ █████████ █████████████████

2   ██████ in Macedonia, █████████

3   **END OF CONFIDENTIAL PORTION OF TRANSCRIPT**

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Page 9

1   Q.   And do you have any plans to -- are

2   you in the process of moving or do you have any

3   plans to change that address?

4   A.   No, I do not.

5   Q.   Okay. And I trust that you have

6   testified hundreds of times?

7   A.   Yes.

8   Q.   How many times have you testified

9   in a civil deposition?

10   A.   Several dozen, I would say.

11   Q.   And of those several dozen, have

12   those all been in the capacity as the director

13   of public safety or were they chief of police

14   and other capacities?

15   A.   Other capacities other than

16   director of public safety, as chief of police,

17   or in my roles within the Cleveland Division of

18   Police.

19   Q.   And asking for an estimate, don't

20   need the exact number, but how many times have

21   you testified in a civil deposition wearing the

22   hat as the director of public safety?

23   A.   Less than five.

24   Q.   And I take it from those

25   experiences you are generally familiar with the

Page 10

1   rules of a deposition and how a deposition

2   takes place?

3   A.   Yes, sir, I am.

4   Q.   But just so there's no confusion

5   and so that attorneys who have deposed you in

6   the past may have had different rules, I just

7   want to make sure we have a common

8   understanding, so I am going to briefly review

9   those, if that makes sense to you.

10   A.   I understand.

11   Q.   I'm going to be asking you a series

12   of questions. We have a stenographer here, who

13   is going to be taking down the answers. She

14   can only take down oral answers and she can

15   only take verbal answers. So, in other words,

16   uh-huh will not get transcribed. A nod of the

17   head, a shrug of the shoulders won't get

18   transcribed. Do you understand that?

19   A.   Yes, I do.

20   Q.   It's also important -- I may ask

21   questions that take longer than I would prefer

22   to have them take. So if you could wait until

23   I have completed a question before you provide

24   a response it will make for a clearer record.

25   A.   Understood.

1   Q.   Okay. Not to be a modest, but I

2 think I'm generally more or less okay about

3 asking questions that are clear, but if there

4 is ever a point in time where you don't

5 understand a question, would you, you know,

6 provide me the courtesy of letting me know, I

7 don't know what you are asking, and I will try

8 to rephrase or clarify the question?

9   A.   I will.

10   Q.   Today is not an endurance test.

11 You have been designated on only a few topics

12 that I think are relatively non-controversial.

13 So I don't expect us to go all day. Okay?

14 That being said, I think we will probably take

15 a break every hour. If you need a break less

16 than every hour or otherwise, just let us know

17 and we will take a break. The one caveat to

18 that is, if there is a pending question, I'm

19 going to need you to respond to that question

20 before we go ahead and take a break. Do you

21 understand that?

22   A.   Understood.

23   Q.   Okay. Do you have any questions

24 about the deposition at all?

25   A.   No, sir.

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1   Q.   Okay. And you are aware that Xerox

2   did file a lawsuit in federal district court in

3   front of Judge Polster seeking monies under a

4   contract?

5   A.   I am aware.

6   Q.   And are you aware that the contract

7   was effective in June of 2013?

8   A.   I do not know the specific dates,

9   but I do recall that it was 2013.

10   Q.   Okay. And I will show you --

11   MR. BRENNAN: If I can please get

12   an exhibit sticker.

13   Q.   I am not here to hide the ball, so

14   marking for purposes of identification as

15   Plaintiff's Exhibit 1.

16   -   -   -   -   -

17   (Thereupon, Plaintiff's Exhibit 1,

18   License and Service Agreement, was

19   marked for purposes of

20   identification.)

21   -   -   -   -   -

22   Q.   And while you're reviewing it, just

23   for purposes of the record, it's a document,

24   the front page of which bears the label Exhibit

25   A, and it's now been marked with a sticker,

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1   Plaintiff's Exhibit 1. But if you look in the

2   upper right-hand corner of the document it is

3   page ID number 67, and it continues through

4   page ID number 103.

5   Do you have the same document in

6   front of you, sir?

7   A.   Yes, sir, I do.

8   Q.   Okay. And do you recognize this

9   document to be the contract executed between

10   Xerox and the City of Cleveland, which, if you

11   turn to the beginning of the agreement --

12   A.   I believe that it is, although I

13   have not seen it since 2013.

14   Q.   Okay.

15   A.   I believe this is a contract

16   between the City and Xerox.

17   Q.   Okay. And if you -- page number

18   70, again, if you go on the upper right-hand

19   corner of the document, it's a document

20   effective June 1st, 2013, do you see that on

21   the first and second lines of the contract?

22   A.   Yes, I do.

23   Q.   Okay. And if you turn to, again,

24   following those numbers, page ID number 89, you

25   have that in front of you, sir?

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 1        A.     Yes, sir, I do.

 2        Q.     And does that page bear your

 3  signature?

 4        A.     My signature, both printed and

 5  script, dated June 27th, 2013.

 6        Q.     Okay.  And you signed this contract

 7  on behalf of the City of Cleveland?

 8        A.     Yes, sir, I did.

 9        Q.     In your capacity as the director of

10  public safety?

11        A.     Yes, sir.

12        Q.     And moving forward through the

13  document.  You see various schedules?

14             MS. DINEHART:  Can you reference a

15  page ID number, Terry?

16        Q.     Well, if you turn the page there,

17  there's an exhibit for compensation, then if

18  you turn, starting at page number -- ID number

19  93, do you see that there's a schedule for list

20  of sites?

21        A.     Schedule A, list of sites,

22  equipment to be deployed.

23        Q.     Okay.  If you turn to 96, schedule

24  B, project implementation schedule?

25        A.     Yes, sir, I see it.
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 1        Q.      Page 97, schedule C, processing
 2   timeline?
 3        A.      Yes, sir.
 4        Q.      Okay.  And then if you turn to the
 5   following page, page ID number 98, it's
 6   amendment number one to the license and service
 7   agreement by and between Xerox and the City of
 8   Cleveland.  Do you see that?
 9        A.      Yes, sir, I do.
10        Q.      Okay.  You were aware that there
11   was an amendment to the contract we just
12   reviewed?
13        A.      I recall there was an amendment.
14        Q.      Okay.  And if you move forward a
15   few pages to page ID number 103.  Again, same
16   question, you signed the amendment on behalf of
17   the City of Cleveland?
18        A.      Yes, sir, I did.  August 23rd,
19   2013.
20        Q.      Again, in the same capacity as the
21   safety director?
22        A.      Director of public safety for the
23   City of Cleveland.
24        Q.      That is not a title you currently
25   have?
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1   A.   No, I do not.

2   Q.   And what was the tenure of that

3 title in that position?

4   A.   I served as director of public

5 safety from January 1st, 2006 to February 10th,

6 2014.

7   Q.   So at the time -- is it fair to --

8 for purposes of the deposition, so we are

9 talking about the same frame, when I refer to

10 the contract, I'm going to be referring to the

11 document you originally signed, dated June

12 2013. And when I talk specifically about the

13 amendment, if I do, I'm going to be talking

14 about the last few pages that we just reviewed,

15 signed in August of 2013. Does that make

16 sense?

17   A.   Understood.

18   Q.   But you understand that both items

19 together became the contract between the City

20 of Cleveland and Xerox?

21   A.   Yes, sir, I understand.

22   Q.   And the reason you signed, both the

23 contract and the amendment on behalf of the

24 City of Cleveland, is because this was a

25 contract that was designed to further public

1 safety; correct?

2   A.   That's correct.

3   Q.   In other words, if this were a

4 contract that was designed for financial

5 purposes or for the parks department, somebody

6 else would have signed it, but you signed it

7 because this contract was primarily designed

8 for public safety?

9   A.   That's correct.

10   Q.   Okay. I hate to ask obvious

11 questions, but as the director of public

12 safety, is it fair to say that your primary

13 goal was to ensure the safety of the residents

14 of the City of Cleveland, as well as visitors,

15 whether those visitors are visitors who commute

16 here for work or otherwise?

17   A.   That certainly was part of my

18 duties and responsibilities.

19   Q.   Was that your primary duty and

20 responsibility, to ensure safety?

21   A.   I provided executive oversight to

22 both the divisions of police and fire and

23 administrative oversight of emergency medical

24 services, kennels, the division of corrections,

25 the office of professional standards and the

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 1   office of emergency management.

 2            So combined together it was a

 3   multitude of duties and responsibilities, but

 4   safety was the key word in my duties.

 5        Q.     Correct.   That's your primary goal,

 6   to ensure safety?

 7        A.     Yes.

 8        Q.     It was?

 9        A.     Yes, sir, that's correct.

10        Q.     Okay.   And are you aware today that

11   you are testifying in two different capacities?

12   One capacity in what's called a 30(b)(6)or in

13   lay terms you will be testifying as the

14   representative of the City of Cleveland.

15   There's a federal rule of civil procedure that

16   allows an organization to designate the person

17   who has the most knowledge or all the knowledge

18   available on behalf of the organization and

19   that person will, in essence, give answers as

20   the voice of the City of Cleveland.   Do you

21   understand that you are testifying in that

22   capacity today?

23        A.     I understand that I'm testifying as

24   a representative of the City of Cleveland, but

25   I do not believe that I alone have insight and
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 1    knowledge of all aspects of the contract or the

 2    agreement.

 3         Q.    No.  And we will break that down a

 4    little bit.

 5              You have been designated as a

 6    (30)(b)(6) witness on a very few number of

 7    limited topics.  You are not being asked to

 8    testify about everything that might be at issue

 9    in the litigation.

10              Do you understand that you have

11    been designated on a few particular topics to

12    be the voice of the City of Cleveland?

13         A.    That's my understanding.

14         Q.    Okay.  And it might help if I show

15    you the notice of deposition.

16                   -   -   -   -   -

17              (Thereupon, Plaintiff's Exhibit 2,

18              Notice of Deposition, was marked for

19              purposes of identification.)

20                   -   -   -   -   -

21         Q.    While I'm marking this, you also

22    understand that you will be giving deposition

23    testimony as a fact witness?  In other words,

24    you are going to bear the responsibility of

25    testifying as the voice and the knowledge of
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Page 20

1   the City of Cleveland. You will be only

2   testifying as to things you personally know and

3   are aware of.

4   A.   I understand.

5   Q.   Okay. Showing you what's been

6   marked for purposes of identification

7   Plaintiff's Exhibit 2, which is a document

8   titled, rule 30(b)(6), notice of deposition for

9   City of Cleveland.

10   Do you have that document before

11   you, sir?

12   A.   Yes, sir, I do.

13   Q.   And if you turn to page two of the

14   document, which bears the heading, matters for

15   examination.

16   A.   I'm sorry, can you -- which page?

17   Q.   Page two?

18   A.   Page two. Yes, sir, I'm there.

19   Q.   Do you understand that for item

20   numbers two, three and five of this matter for

21   examination, you have been designated the

22   representative for the City of Cleveland?

23   A.   Yes, sir, I do.

24   Q.   Okay. Are you prepared today to

25   testify on those topics?

Page 21

1   A.   I can testify to the best of my

2   knowledge and memory.

3   Q.   As well as the City of Cleveland's

4   knowledge and memory?

5   A.   That's correct.

6   Q.   And, sir, what did you do to

7   prepare yourself to be able to testify on

8   behalf of the City of Cleveland on these three

9   topics?

10   A.   I reviewed my calendar of meetings

11   that I had, as well as having conversations

12   with attorneys of the Department of Law of the

13   City of Cleveland.

14   Q.   Okay. Other than attorneys on

15   behalf of the City of Cleveland, did you speak

16   with anyone else to prepare yourself to testify

17   on these three topics?

18   A.   I had a brief conversation with

19   project manager Larry Jones II.

20   Q.   When did you have that conversation

21   with Mr. Jones?

22   A.   I believe Wednesday of this week.

23   Wednesday of this week.

24   Q.   Two days? Okay.

25   A.   Yes, that's correct.

Page 22

1   Q.   Okay. And I want to talk a little

2   bit more about that conversation. You reached

3   out to him?

4   A.   I did.

5   Q.   And what did you say to Mr. Jones?

6   A.   I asked him for the number of

7   respondents that we had to the request for

8   proposals. I remember the names of the

9   businesses that did respond to our request for

10   proposals, but I didn't have a memory of how

11   many actually responded to our RFP.

12   Q.   And did you tell him you were

13   asking this question because you were going to

14   be giving deposition testimony?

15   A.   Yes. Yes, sir, I did.

16   Q.   Okay. And was this a telephonic

17   communication or in person?

18   A.   No, it was telephone.

19   Q.   And what was Mr. Jones's response?

20   A.   He reminded me that there were five

21   respondents to the RFP.

22   Q.   And, again, the respondents to the

23   RFP -- RFP are a request for proposal?

24   A.   That's correct.

25   Q.   For the -- what we are calling the

Page 23

1   2013 contract or the contract that's at issue

2   in the litigation?

3   A.   Yes, sir, that's correct.

4   Q.   Who were the respondents?

5   A.   Redflex, KTS, Xerox, CATS CO, and

6   one -- one additional vendor.

7   Q.   Okay. The name of whom just eludes

8   you right now?

9   A.   I don't recall at this moment.

10   Q.   Okay. But Mr. Jones did provide

11   you with the name of --

12   A.   That's correct.

13   Q.   -- the names of all five?

14   A.   That's correct.

15   Q.   Was there anything else to the

16   conversation or just simply quick and --

17   A.   I don't think the conversation

18   lasted more than three to five minutes, if I

19   remember correctly. It was a brief

20   conversation.

21   Q.   What else was discussed during that

22   conversation?

23   A.   Oh, I asked him who specifically --

24   I did ask him the second question, who

25   specifically sat on the review team to review

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 1   the request for proposals.
 2        Q.     On behalf of the City of Cleveland?
 3        A.     City of Cleveland and the Clerk of
 4   Courts' office.
 5        Q.     Okay.  Did he provide you a
 6   response to that question?
 7        A.     He reminded me that there were
 8   three representatives from the City of
 9   Cleveland, three from the office of Clerk
10   Turner and himself.
11        Q.     Who were the three from -- on
12   behalf of the City of Cleveland?
13        A.     I do not know.  We didn't -- I
14   didn't discuss that with him.
15        Q.     He just identified the quantity of
16   folks rather than their identity?
17        A.     Yes, that's correct.
18        Q.     Okay.  Separate and apart from what
19   he told you, do you remember who was there on
20   behalf of the City of Cleveland at the time?
21        A.     (Pause.)
22        Q.     In other words, as I understand
23   your testimony, there were seven folks who were
24   deciding who is going to get this contract;
25   right?
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Page 25

1   A.   There were seven individuals that

2   were evaluating the responses for the requests

3   for proposals.

4   Q.   Okay. And who do you recall

5   wearing the City of Cleveland hat being one or

6   more of those folks?

7   A.   Larry Jones II.

8   Q.   Do you recall the two other

9   representatives?

10   A.   There were three additional

11   representatives from the City, I do not recall

12   their names.

13   Q.   Were you one of the

14   representatives?

15   A.   No, I wasn't.

16   Q.   So, in other words, you were not

17   one of the folks reviewing the responses, five

18   RFP responses, in deciding, hey, I should rank

19   this one first or I want --

20   A.   No, I did not.

21   Q.   Okay. Do you recall who, if

22   anyone, on behalf of the clerks of courts had

23   that responsibility at the time?

24   A.   I do not know the specific names.

25   Other than the fact that there were three

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1   representatives.

2   Q.   Okay. And do you know who made the

3   determination, first, how many people would be

4   involved in reviewing the responses and,

5   secondly, who would compromise -- who would

6   compose that committee?

7   A.   I do not recall.

8   Q.   Okay. And just to be clear, it was

9   not your decision, we need X number of people

10   to review the responses or the composition of

11   the committee should be these folks, that was

12   not your -- your bailiwick?

13   A.   There may have been a

14   recommendation made, but I do not recall who

15   made the recommendation or the composition

16   itself, how that structure was designed.

17   Q.   Okay. Do you know why the Clerk of

18   Courts would participate in this type of review

19   process?

20   A.   Well, the clerks of courts in their

21   role handles all the buying structures,

22   payments, in a relationship between public

23   safety and, specifically, the Division of

24   Police and the Clerk of Courts was integrated

25   so that -- so the traffic camera enforcement

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1   program really was broader than just the

2   cameras and the police force. It involved the

3   Clerk of Courts.

4   Q.   Because they are the folks that

5   have to process the actual tickets that are

6   issued and the payments that come in as a

7   result of the tickets?

8   A.   That's at least a portion of their

9   duties and responsibilities, certainly.

10   Q.   Okay. As well as monitoring the

11   docket and dealing with filings and other

12   responsibilities?

13   A.   That's right.

14   Q.   You understand that the contract we

15   have been talking about is not the first

16   contract the City of Cleveland had for traffic

17   enforcement; correct?

18   A.   The first contract goes back to

19   2005, if I remember correctly.

20   Q.   And with whom did the City of

21   Cleveland enter into that contract with?

22   A.   I believe it was ACS.

23   Q.   And do you know where they are

24   located out of?

25   A.   No, I do not.

1   Q.   And did there come a point in time

2   where ACS stopped being the provider for

3   traffic enforcement for the City of Cleveland?

4   A.   I believe there was a name change,

5   but the timeline for that change is unclear. I

6   don't recall.

7   Q.   Okay. ACS became Xerox?

8   A.   That's my understanding.

9   Q.   Okay. Do you know how many

10 different contracts from the first time the

11 City of Cleveland entered into a contract for

12 traffic camera enforcement until the present

13 the City entered into?

14   A.   I remember appearing before

15 Cleveland City Council in 2011 asking Council

16 for an extension of the current contract with

17 ACS. And the City Council did approve that

18 contract extension sometime in 2011.

19   Q.   So it is your understanding that

20 there was a contract approximately 2005, an

21 extension in 2011, and this contract in 2015?

22   A.   That's correct.

23   Q.   And do you know whether the

24 composition of the people who are making the

25 decision or at least the recommendation to

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1   enter into a contract was the same in 2005 as

2   it was in 2013?

3   A.   The 2005 contract was entered into

4   by the administration of then Mayor Jane

5   Campbell. Whether or not there were any

6   individuals that were involved in that original

7   agreement in 2005 to the 2011 extension, I'm

8   not aware of any.

9   Q.   Were the titles largely the same,

10   regardless of the individual folks who were

11   holding that title? In other words, there were

12   people from the City of Cleveland, there were

13   people from the Clerk of Courts, and Mr. Jones

14   or his predecessor was involved?

15   MS. DINEHART: Objection to the

16   extent he said he was not sure.

17   A.   I don't recall. Not that I don't

18   recall. I don't know.

19   Q.   Okay. Were you involved in the

20   issuance of the original contract at ACS?

21   A.   In 2005?

22   Q.   Correct.

23   A.   No, sir.

24   Q.   But you were involved in the

25   renewal in 2011?

Page 30

1   A.   Yes, sir, I was.

2   Q.   And did you make the recommendation

3   that the renewal should take place?

4   A.   I did make a recommendation for a

5   renewal extension to take place to allow the

6   department of public safety to prepare a

7   request for proposals to explore the

8   feasibility of whether or not, number one, to

9   continue the program, number two, whether or

10 not to identify new technology that might be

11 available.

12   So when we asked for the extension

13 in 2011, I made a commitment, as did the City,

14 to develop the request for proposals and seek

15 additional services or other services.

16   Q.   And did that go out through an RFP

17 in 2011?

18   A.   I believe it was distributed in

19 November of 2012. A request for proposals was

20 developed and distributed to vendors, potential

21 vendors, I think, in November of 2000 -- well,

22 it was late 2012.

23   Q.   And just like the 2013 contract,

24 did more than one vendor respond to that RFP?

25   A.   That was the RFP that we are

Page 31

1   talking about, the five vendors we are talking

2   about included Redflex, I think it was ATC, the

3   names of the five companies escape me right

4   now.

5   Q.   Okay. And just to be clear, so at

6   the time the extension took place in 2011,

7   there was no RFP at that point in time?

8   A.   There was not. None had yet been

9   developed.

10   Q.   Okay. And having been through the

11   relationship with ACS, you made the

12   recommendation to whom that the contract should

13   be extended between ACS and City of Cleveland?

14   A.   I had conversations with the

15   current finance director, Sharon Dumas, our

16   staff, including the Chief of Police, project

17   coordinator, Larry Jones, and made a

18   recommendation to Cleveland City Council.

19   Q.   To continue the relationship with

20   ACS?

21   A.   For a period of two years, if I

22   remember correctly.

23   Q.   And what factors did you consider

24   at that point in time to determine whether or

25   not to continue that relationship?

Page 32

1   A.   I thought the program had value.

2 And I believe that ACS was providing good

3 service to the City of Cleveland. But we also

4 recognized at that time that technology had

5 moved along to the point where there were other

6 options and opportunities available to the City

7 of Cleveland in terms of the traffic

8 enhancement camera program that needed to at

9 least be considered.

10   The system that originally had been

11 installed was in 2005, in my opinion, was ahead

12 of others, was dated and could and should be

13 enhanced.

14   Q.   And when you refer to value, you

15 are not talking about economic value, you are

16 talking public safety value?

17   A.   I'm specifically talking about

18 public safety value. I was familiar with the

19 trend, enforcement efforts, accident rates,

20 within the City of Cleveland. And I believe,

21 in my opinion, and I made the argument it had

22 value to the residents.

23   Q.   For the extension, were you

24 involved at all in dealing with Xerox directly

25 about -- or ACS about negotiating the extension

Page 33

1   or talking about what technology could be

2   improved as part of the extension?

3   A.   I don't recall having a specific

4   role in those discussions, although I may have

5   been involved at some level of conversation. I

6   don't believe that I personally was involved in

7   that, discussions with the vendor at that time.

8   Q.   Okay. But fair to say as of 2011

9   you were satisfied with the work that ACS and

10   Xerox had done on behalf of the City of

11   Cleveland, recognizing you are always looking

12   for improvement?

13   A.   I believe that the service that

14   they provided, in my opinion, was very good,

15   very responsive, other than a few minor issues

16   that were identified. The service that they

17   provided, in my opinion, was very good.

18   Q.   You've indicated that as part of

19   your preparation to testify on behalf of the

20   City of Cleveland you reviewed your calendar?

21   A.   Yes, sir.

22   Q.   Is that a paper calendar or an

23   electronic calendar?

24   A.   I looked at my most re -- when I

25   moved from public safety to the Office of the

Page 34

1 Mayor in February of 2010, I was able -- in

2 2014, I was able to look at the data that I

3 currently have available regarding

4 conversations and dates and so forth. I did

5 not have access to the information prior to

6 2014, other than just a few, because different

7 systems, different servers. I just didn't have

8 access.

9   Q.   Okay. So in preparing for your

10 testimony today, you were only able to review

11 calendar information --

12   A.   Calendar information, there was a

13 short period of time in 2013 and 2014, up to

14 the current time.

15   MS. DINEHART: Please, let him

16 finish the question.

17   THE WITNESS: I'm sorry. Okay.

18   Q.   Yeah, we are getting into -- I can

19 speak fast on occasion, I have been warned by

20 stenographers before. I will try to measure it

21 here.

22   Again, you have reviewed an

23 electronic calendar, not a paper calendar?

24   A.   Electronic.

25   Q.   Do you know at what point in time

Page 35

1 that calendar started for purposes of your

2 review?

3   A.   Around September of 2013.

4   Q.   Okay. And the program the City

5 uses is Microsoft Outlook?

6   A.   Yes, that's correct.

7   Q.   Okay. And is it your practice,

8 when you make a calendar entry, to sometimes

9 put a narrative on that calendar entry?

10   A.   Yes, it is.

11   Q.   So, in other words, some people put

12 a calendar entry that says, for example,

13 deposition from 9:30 a.m. to X p.m. and just

14 leave it at that. Was it more your practice to

15 put a calendar entry that would say, I had a

16 conversation with so and so and this is what we

17 discussed?

18   A.   It depends. If it was an

19 appointment for a deposition like today, my

20 calendar would just articulate the fact that

21 I'm scheduled to be here from 9:30 to some

22 period of time without any details.

23   If I had a conversation with

24 someone and I thought it was worthy or

25 important to maintain a record, I would make a

Page 36

1   narrative section. I would provide a

2   narrative.

3   Q.   And you would do that after the

4   fact; correct?

5   A.   Generally after the fact, that's

6   correct, or I would update my calendar.

7   Q.   So, in other words, as opposed to a

8   lot of folks using a calendar as a prospective

9   measure, you would, in essence, use the

10   calendar as kind of a diary of what happened

11   and what occurred during a conversation?

12   A.   Both.

13   Q.   Both?

14   A.   (Witness nodding affirmatively.)

15   Q.   Okay. Fair enough.

16   Did you review any e-mails in

17   preparation for the testimony today on behalf

18   of the City of Cleveland?

19   A.   One or two e-mails. If I -- one or

20   two. And they involved, 2013, developing a

21   messaging for the traffic enforcement camera

22   system, the benefit that it had for the City of

23   Cleveland.

24   I remember working with Xerox to

25   create a message, its value, in terms of

Page 37

1   accident reduction and enforcement of speed

2   reduction and quality of life in the City of

3   Cleveland. I remember at least one

4   conversation with a representative of Xerox in

5   that regard.

6   Q.   Is this because there was a

7   potential ballot initiative that might

8   negatively impact the traffic program?

9   A.   In 2013 I wasn't aware of any

10 ballot initiative. The legislation had been

11 enacted by Cleveland City Council and we were

12 looking at, you know, this is good for the

13 citizens of Cleveland, thus created a more

14 timely message to the citizens on its value.

15 And that was around -- between September and

16 December of 2013.

17   Q.   Why were you doing that at that

18 point in time if the program had been in place

19 for approximately eight years?

20   A.   Well, there was significant

21 enhancement to the program. We had an

22 increased number of traffic cameras located

23 throughout the City of Cleveland. We had

24 increased flexibility with the mobility, with

25 the mobile traffic enforcement cameras, and we

Page 38

1   had the opportunity to use the cameras as

2   surveillance for the Division of Police.

3   These were options and

4   opportunities that weren't available to us

5   before the new contract.

6   Q.   But, in other words, would you need

7   to message to the electorate unless you viewed

8   there to be some potential exposure to the

9   Traffic Camera Program or was this simply just

10 PR?

11   A.   Well, it was PR, but it was safety

12 messaging. First alert people, of course, we

13 had to make a notice to the public about where

14 the cameras were located. That was a

15 requirement that we do so.

16   So that was part of the message,

17 that we had increased the number of the traffic

18 cameras, this is where they are located, put it

19 on the City's website, what's the value of the

20 program. All of those things were done, not

21 only to messaging, but to be in compliance with

22 the legislation that was enacted by the

23 Cleveland City Council.

24   Q.   And with whom did you speak at

25 Xerox about those topics?

Page 39

1   A.   You know, I spoke with Larry Jones,

2   again, who interacted or help facilitate with

3   someone from Xerox, but I don't recall whom.

4   Q.   Okay. And what specifically do you

5   recall doing to message to the electorate the

6   benefits of the Traffic Camera Program at that

7   time?

8   A.   It was -- I worked with then

9   director of communications, Maureen Harper,

10   H-A-R-P-E-R, put some media advisories. I know

11   it was put on the City's website.

12   At that time we had a safety blog,

13   a blog. It was called CLE Safety, that we

14   posted. And we shared it with members of

15   Council and others.

16   Q.   Okay. Do you recall giving any

17   speeches on the topic of the benefits of the

18   Traffic Camera Program at that time?

19   A.   I do not recall it, during my

20   tenure as safety director, ever -- other than

21   testimony in front of City Council or maybe a

22   media inquiry, which I might be responsive to.

23   I do not recall ever giving any public

24   presentation on the program itself.

25   Q.   Okay. Just stepping back to your

Page 40

1   role as a representative on behalf of the City

2   of Cleveland, have you testified to everything

3   you recall discussing between yourself and

4   Larry Jones earlier this week?

5   A.   Yes, sir.

6   Q.   And you spoke with your counsel as

7   well?

8   A.   That's right.

9   Q.   I don't want to know things you

10 discussed with your counsel about strategy or

11 otherwise, but as a result of preparing for

12 your 30(b)(6) testimony today, did you learn

13 new facts over the course of the past few weeks

14 that you didn't know prior to 2016?

15   A.   I learned that there were five

16 respondents to the RFP, where my memory

17 originally had suggested three.

18   Q.   Okay.

19   A.   I learned -- that was one thing

20 that I did, in fact, learn. And I did learn

21 the number of individuals that was actually

22 participating in the review of the request for

23 proposals. That it was seven individuals,

24 three from the clerk, three from the City of

25 Cleveland and Larry Jones II.

Page 41

1   Q.   Okay. What you just testified to,

2   those are the only facts you're aware of today

3   that you wouldn't have been aware of in 2015 or

4   the end of 2014?

5   A.   No, sir, that's -- those that I

6   just identified are that which I actually

7   recall in my memory rather than learn, but

8   that's correct.

9   Q.   Okay.

10   A.   Yeah.

11   Q.   We had a double negative in there,

12   but you agree with my statement?

13   A.   Yes, I did.

14   Q.   Okay. Is it fair to say, and I

15   think you have already testified to this, that

16   the City of Cleveland implemented the Traffic

17   Camera Program to enhance public safety?

18   A.   I believe that's the motive.

19   Q.   That was certainly your motive as

20   the director of public safety?

21   A.   I knew that the revenue stream,

22   although it was significant, it only

23   represented about one percent of the City's

24   annual operating budget. So, you know, one

25   percent is -- although the dollar amount seems

Page 42

1   high, the real impact, in my opinion, was on

2   public safety.

3   Q.   And when you are talking about one

4   percent, at the time frame we are talking about

5   during the existence of the contract that's at

6   dispute in the litigation, your annual budget

7   was approximately 500 million dollars?

8   A.   525 to 550, depending on the year.

9   Q.   So the Traffic Camera Program was

10   generating approximately 5 million dollars or

11   less on an annual basis?

12   A.   The number fluctuated, actually

13   decreased through the years, but if I remember,

14   from 2013 it was 5 point 2 million dollars.

15   Q.   Is it fair to say, as the director

16   of public safety, you viewed the decrease in

17   revenue as actually, which may be

18   counterintuitive, a positive development?

19   A.   I certainly did. I saw that the

20   number of -- I believe there was a direct

21   correlation between the number of citations,

22   that decrease, and the decrease in revenue

23   stream, along with the decrease in accidents

24   being beneficial to the City of Cleveland.

25   Q.   Right.

Page 43

1   So are you generally aware that in

2   the time frame of 2007, 2008, the revenue

3   generated from the Traffic Camera Program was

4   approximately 9 million dollars, and by the

5   time of this contract in 2013, that had

6   decreased to about 5 million dollars?

7   A.   Well, I knew -- I remember that it

8   was higher and that it was 5 point 2 in 2013,

9   but that's where my memory sits, but I do not

10   remember it being 9 million dollars, I don't

11   remember the exact numbers.

12   Q.   Okay. And in ballpark terms --

13   A.   It --

14   Q.   -- revenue was cut about in half

15   during the life of the program, which you

16   viewed as a positive development?

17   A.   What I viewed as a positive, of

18   course, was the reduction in accidents and

19   traffic citations and notices being issued.

20   Q.   Right.

21   And all things being equal, you

22   would prefer to have the City of Cleveland have

23   more revenue rather than less revenue, but the

24   fact that the revenue was decreasing you viewed

25   as a positive?

Page 44

1   A.   Well, I viewed it as a benefit to

2   the program, yes.

3   Q.   Okay. And to the program, a

4   benefit to the City of Cleveland?

5   A.   It was Operation Safe Streets was

6   the name the City of Cleveland named the

7   program. We are referring to the traffic

8   camera enforcement program.

9   Q.   And Operation Safe Streets, was

10 that solely limited to the Traffic Camera

11 Program or were there other --

12   A.   There were --

13   Q.   -- components to that program?

14   A.   I'm sorry, I cut you off there.

15   There were other components

16 regarding -- including neighborhood traffic

17 enforcement by the officers on patrol, but

18 Operation Safe Streets was a combination of

19 enforcement issues that were linked to the

20 traffic camera enforcement program, but not

21 standing alone.

22   Q.   So, in other words, you're aware,

23 generally, that following the ballot initiative

24 in November, the City of Cleveland terminated

25 the Traffic Camera Program?

Page 45

1   A.   Understood.

2   MS. DINEHART: Objection.

3   Q.   And following that termination, did

4   end in its entirety or were there components

5   that still remained?

6   A.   I cannot -- because of the change

7   in my role in the Cleveland City Government,

8   I'm not familiar. I do not know.

9   Q.   Okay. You don't know whether there

10   were some vestiges that remained or whether it

11   was all scrapped after the ballot issue?

12   A.   I cannot answer that question. I

13   do not know.

14   Q.   Are you aware of any components of

15   that operation that would potentially remain

16   viable following the end of the traffic

17   cameras?

18   A.   I would believe that

19   neighborhood -- again, from my own experience

20   rather than knowledge, I would believe that

21   neighborhood traffic enforcement by the

22   Cleveland Division of Police would continue.

23   Q.   You are just not aware sitting here

24   today one way or the other?

25   A.   No. The only measurable item that

Page 46

1   I can identify is that I did some analysis late

2   last year and I saw that pedestrian fatalities

3   in the City of Cleveland 2015 almost doubled

4   over 2014.

5   Q.   Okay. So following that, you know,

6   it's fair to say that it's your testimony that

7   Xerox and the City of Cleveland Traffic Camera

8   Program had a positive impact on public safety?

9   A.   I believe it had a very positive

10   impact.

11   Q.   And as you have just indicated, the

12   corollary is true, which is terminating the

13   program had a negative impact on public safety?

14   A.   I believe that it did.

15   Q.   Okay. In other words, fatalities

16   increased, rates of accidents increased, number

17   of speeders increased?

18   A.   The only thing that I can clearly

19   articulate in response is from my own

20   experience and insight, is that the pedestrian

21   fatalities have increased, I'm not familiar

22   with the accident rates currently.

23   Q.   Okay. So following the termination

24   of the program, pedestrian fatalities

25   increased. Do you know whether driver

Page 47

1 fatalities increased?

2   A.   I do not.

3   Q.   Okay. But you are certainly aware

4 that pedestrian fatalities increased?

5   A.   That's correct.

6   Q.   The goal of the Traffic Camera

7 Program was to reduce incidents of driver

8 speeding?

9   A.   (Witness nodding affirmatively.)

10   Q.   If you could speak out loud, you

11 are nodding your head.

12   A.   I was waiting for you to stop

13 asking.

14   Q.   I will continue my --

15   A.   Okay.

16   Q.   But one of the goals -- fair

17 response on your behalf. One of the goals of

18 the Traffic Camera Program was to reduce the

19 incidents of folks speeding?

20   A.   That's correct.

21   Q.   Another goal was to reduce the

22 incidents of folks running red lights?

23   A.   Yes, sir.

24   Q.   Okay. Those two things together

25 had the ultimate goal of reducing accidents and

Page 48

1 injuries, including fatalities?

2   A.   Yes, sir.

3   Q.   Okay. And, in other words, the

4 Traffic Camera Program was put in place, for

5 lack of a better phrase, to stop law breakers?

6   A.   Yes, sir.

7   Q.   Okay. And the goal is to ensure

8 the safety of both drivers and pedestrians?

9   A.   Yes, sir.

10   Q.   In addition to the traffic cameras

11 themselves reducing the number of the folks

12 speeding and running red lights, is it fair to

13 say there are additional benefits from

14 implementing the traffic cameras? And if you

15 need me to identify some, I'm fine doing so,

16 but are you aware of other benefits other than

17 people not speeding as much and not running red

18 lights as much?

19   A.   I believe that it enhanced the

20 perception of safety within the City of

21 Cleveland. People driving into the community

22 would know in advance that, you know, you have

23 to be alert and aware of the laws and drive

24 safely.

25   Q.   So one of the benefits is actually,

Page 49

1   people -- whether or not I'm driving through

2   the City of Cleveland to get a ticket, I can

3   see there's a sign up there and there's a

4   camera up there that say, hey, you know, we are

5   the City of Cleveland, we are kind of

6   monitoring you, we are making sure you are

7   complying with our laws. That's one of the

8   benefits, whether or not you issue a ticket?

9   A.   That's right.

10   Q.   And, in addition, there's some

11 benefit to the City of Cleveland, if it didn't

12 have traffic cameras, it may choose to deploy

13 officers to monitor speed and red light

14 violations; correct?

15   A.   It would require increased

16 employment of police officers to accomplish the

17 same goal.

18   Q.   And if you are having a police

19 officer monitor an intersection as opposed to a

20 traffic camera, that would cost the City of

21 Cleveland hundreds of thousand of dollars, if

22 you take into consideration salary and benefits

23 of the officer or officers?

24   A.   That's right.

25   Q.   And by freeing up officers who

Page 50

1   otherwise might be monitoring intersections

2   that the traffic cameras monitored, those

3   officers could then be re-deployed elsewhere

4   within the City of Cleveland to benefit public

5   safety otherwise; correct?

6   A.   Yes, sir.

7   Q.   Alternatively, the City of

8   Cleveland could hire a few officers and employ

9   fewer officers, but if the officers aren't

10   monitoring intersections, they can be used

11   elsewhere to stop drug dealers or to get guns

12   off the feet or otherwise?

13   A.   Or respond to other calls for

14   service, multitude of other services, yes, and

15   responsibilities, yes, sir.

16   Q.   You would agree with my statement

17   and the additional items that you added on?

18   A.   Yes, sir.

19   Q.   And is it fair to say that the

20   traffic cameras had a deterrent effect, not

21   only where they were located, but throughout

22   the City of Cleveland?

23   So, in other words, I'm driving in

24   from Shaker Heights to go work downtown at the

25   PNC Building and I see a traffic camera and the

Page 51

1   signage. I might not only run red lights, but

2   slow down in that area, that might continue

3   throughout my tenure of driving through the

4   City of Cleveland?

5   A.   Yes, sir.

6   Q.   We talked a little bit about the

7   revenue decreasing over time after the traffic

8   cameras were implemented. The same would be

9   true of the number of citations issued and

10   paid; correct?

11   A.   That's correct.

12   Q.   So, in other words, the program's

13   implemented in 2005, by 2013 the number of

14   citations are on the decline, both for red

15   light and speed?

16   A.   Yes, sir.

17   Q.   And, again, you view that as a

18   positive because people are now following laws?

19   A.   Yes, sir.

20   Q.   Okay. In other words, it's not as

21   though 50 percent fewer folks are driving on

22   the street, just, you know, 50 percent fewer

23   folks -- or more folks are following the laws?

24   A.   That's my belief.

25   Q.   Okay. Is it fair to say that the

Page 52

1   Traffic Camera Program ended following a ballot

2   initiative, not because of a decision you made

3   to end the Traffic Camera Program?

4   A.   Yes, sir.

5   Q.   In an ideal world, is it fair to

6   say, the Traffic Camera Program, in your mind,

7   would have continued 2015, 2016 and to the

8   present?

9   A.   It would have continued at least

10   through the life of the contract.

11   Q.   And can you think of any reason why

12   you wouldn't have wanted it to continue after

13   the life of the contract?

14   A.   I cannot think of any reason why I

15   would recommend that it -- the program end.

16   Q.   Can you think of any initiative the

17   City of Cleveland has undertaken in its history

18   that has been more effective in reducing the

19   incidents of speeding and running red lights,

20   other than the Xerox/City of Cleveland Traffic

21   Camera Program?

22   A.   I do not have the statistical --

23   historical statistical information to compare

24   it against. I'm certainly aware of programs

25   that have been in existence in the Cleveland

Page 53

1 Division of Police historically that were

2 viewed to be appropriate, even necessary, but I

3 just don't have any statistical information

4 upon which to compare.

5   Q.   Okay. And I won't extend it to the

6 entire history of the City of Cleveland --

7   A.   Yes.

8   Q.   -- but during your tenure, can you

9 think of any program the City of Cleveland

10 enacted that was effective at reducing the

11 incidents of speeding and running red lights as

12 the Xerox/City of Cleveland Traffic Camera

13 Program?

14   A.   No, sir.

15   MS. DINEHART: Objection.

16   This is in his tenure as the

17 director of public safety?

18   MR. BRENNAN: Correct.

19   Q.   With that addition, as director of

20 public safety, can you think of any other that

21 was as effective?

22   A.   No, sir.

23   Q.   Pardon me.

24   What services did Xerox provide

25 under the contract that we've discussed?

Page 54

1   A.   Installation, coordination,

2   providing information to the Division of

3   Police. Networking, interaction, for both the

4   City and the Clerk of Courts.

5   Q.   Okay.

6   A.   Specific within the program itself,

7   the three areas that I articulated with the new

8   contract, of course --

9   Q.   Correct.

10   A.   -- with the offer to increase the

11   number of fixed locations throughout the City

12   of Cleveland, in those areas that were

13   approved. The ability to utilize the fixed

14   camera location for the Division of Police as

15   surveillance cameras, and increased mobility of

16   the mobile and traffic enforcement program, the

17   mobile cameras.

18   MS. DINEHART: Terry, I would like

19   to note for the record, is that one of the

20   30(b)(6) section or are you asking under his

21   personal knowledge?

22   MR. BRENNAN: No, I'm sorry.

23   Q.   And I might have referred earlier,

24   if you look at your notice, I understand you

25   are the designated representative on topics

Page 55

1   two, four and five, I might have accidentally

2   said topic three.

3   MR. NATHANSON: Two, three and

4   five.

5   MS. DINEHART: Two, three and five.

6   MR. BRENNAN: Okay.

7   Q.   So two, three and five you have in

8   front of you?

9   A.   Yes, sir.

10   MR. BRENNAN: Yeah. It's a fair

11   objection.

12   Q.   And I'll get back to your 30(b)(6),

13   but I would like to sort of -- we are in your

14   30(b)(6) deposition, I will take a break at

15   some point in time and I will just have you

16   testify in your personal deposition capacity,

17   so at a fair point to take a break --

18   MS. DINEHART: I just want to

19   clarify, then you are only talking about

20   30(b)(6) knowledge as of right now, you will

21   let us know when you switch to personal

22   knowledge, is that what you are saying?

23   MR. BRENNAN: We will take a break

24   and we will go to personal knowledge.

25   MS. DINEHART: Okay.

Page 56

1   Q.   So right now we are within the

2   umbrella although I crossed the line, and I

3   apologize, into your factual knowledge.

4   Your testimony today, is it fair to

5   say, that's as the representative of the City

6   of Cleveland?

7   A.   Yes, sir.

8   Q.   Okay. When you initially

9   considered whether or not that Xerox or ACS,

10   depending on what you consider the name to be

11   at the time, to continue to be the vendor for

12   the City of Cleveland for the Traffic Camera

13   Program, what factors were most important to

14   you?

15   A.   The development of the request for

16   proposals was, in my opinion, extremely

17   important. Although I was not directly

18   involved in the development of the request for

19   proposals, those items that I wish to see

20   included within the request for proposals was

21   made very clear for the project coordinator and

22   anyone else involved at that time.

23   Specifically, I wanted those three

24   things. I wanted to increase the number of

25   fixed locations located throughout the City of

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1   Cleveland, increase the mobility of the mobile

2   cameras, and to have the ability for the

3   Division of Police to be able to utilize the

4   fixed camera locations as surveillance cameras

5   for operational and forensic purposes. Those

6   were the three key items that I wanted to see

7   included within the request for proposals.

8   That, to my understanding, was, in

9   fact, incorporated in the respondents to the

10 RPF, responded to a multitude of issues, but

11 that being -- those three were included.

12   Q.   Did you review the RFP before it

13 was issued?

14   A.   I don't recall. I don't recall.

15   Q.   Did you review all five responses

16 to the RFP?

17   A.   No, sir.

18   Q.   Okay. Did you review any of the

19 five responses?

20   A.   No, sir.

21   Q.   Did somebody prepare for you or

22 otherwise give you information summarizing what

23 the responses were to the RFP?

24   A.   I believed I was briefed. I

25 remember being briefed by the project manager,

Page 58

1   Larry Jones. So certainly I was briefed on the

2   responses and the progress, but I don't recall

3   any specific briefing. If the question is

4   briefing documents, I do not recall it.

5   Q.   Okay. In other words, what

6   information did you have available when

7   considering the responses to the RFP and making

8   a recommendation?

9   A.   The recommendations from the

10   project manager and members of the project or

11   the review team.

12   Q.   And who were those folks?

13   A.   Again, I don't recall all six of

14   their names. I do not recall.

15   Q.   Fair to say that the reason the

16   City of Cleveland chose to continue its

17   relationship with Xerox is because it viewed it

18   as the best possible provider of traffic camera

19   services?

20   MS. DINEHART: Objection.

21   You can answer.

22   A.   The opinion of the project

23   coordinator and the team, they were most

24   responsive to our request for proposal.

25   Q.   Best technology?

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1   A.   Best --

2   MS. DINEHART: Same objection.

3   A.   Yeah. I do not know that they were

4   the best, but certainly provided the services

5   that we were seeking.

6   Q.   Okay. Do you recall anyone

7   offering better technology?

8   MS. DINEHART: Objection.

9   A.   I can't identify that there was.

10   Q.   Okay. One of the reasons that the

11   City of Cleveland chose Xerox is because it

12   provided the best ticket processing?

13   MS. DINEHART: Objection.

14   A.   They provided good ticket

15   processing. Again, I do not know that they

16   were the best among all the five respondents in

17   that specific component.

18   Q.   Was the cost of working with Xerox

19   a factor in the determination by the City of

20   Cleveland to choose Xerox other another vendor?

21   MS. DINEHART: Objection.

22   A.   It was a considerable amount of

23   discussion on funding or revenue stream in that

24   there were at least two options, one, a fixed

25   cost or a percentage of violations. We made a

Page 60

1   conscious decision to go forward on the side of

2   a fixed cost.

3   Q.   But this wasn't a lowest bid RFP?

4   A.   No, sir, it was not.

5   Q.   Do you know where Xerox stood in

6   terms of the estimated cost of working with

7   Xerox versus other vendors?

8   A.   I do not recall that.

9   Q.   And that wasn't a primary driver in

10 recommending Xerox over other vendors; correct?

11   MS. DINEHART: Objection.

12   A.   Could you ask that question again

13 for me, please?

14   Q.   And that wasn't a driving factor in

15 the City of Cleveland choosing Xerox as opposed

16 to other vendors?

17   A.   I do not believe it was.

18   Q.   Okay. Fair to say that as of 2013

19 that the City of Cleveland was very satisfied

20 with the services Xerox had been providing?

21   A.   I believe the City was satisfied

22 with the services provided.

23   Q.   Okay. And I'm happy to show you

24 documents, but I think you said, you know,

25 extremely satisfied overall?

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1   A.   Yeah.   Other than a few -- again,

2   other than a few issues where we had cameras

3   that were inoperative for an extended period of

4   time and not being notified of that, I think

5   our relationship with ACS and Xerox was very

6   good.

7   MR. BRENNAN: Okay.   Why don't --

8   we have been going just about an hour, why

9   don't we take a five-minute break right now --

10   MS. DINEHART: Okay.

11   MR. BRENNAN: -- if that makes

12   sense?

13   (Short recess had.)

14   Q.   Sir, I think you already testified

15   to this, but I'm just reviewing my notes, is it

16   fair to say that the Xerox/City of Cleveland

17   Traffic Camera Program had a tremendous

18   positive impact on public safety in the City of

19   Cleveland?

20   A.   Yes, sir, it did.

21   Q.   And we talked a little bit about

22   your calendar or what I inartfully referred to

23   as your diary entries here.   I want to hand you

24   an exhibit and understand how you keep records

25   here.

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1   -   -   -   -   -

2   (Thereupon, Plaintiff's Exhibit 3,

3   Calendar Entry, Document CL019, was

4   marked for purposes of

5   identification.)

6   -   -   -   -   -

7   Q.   Showing you what's been marked for

8   purposes of identification as Exhibit 3.   Do

9   you recognize this document?

10   A.   Yes, sir, I do.

11   Q.   Okay.   And is this an example of

12 something that you would have put into your

13 Outlook Calendar to memorialize a conversation

14 that you had?

15   A.   Yes, sir.

16   Q.   And is this something that you

17 printed off in connection with the litigation?

18   A.   I don't know that I printed it or

19 provided it to the City's representative.   I

20 may have provided it to them electronically.

21   Q.   One way or the other --

22   A.   It was provided to the Law

23 Department of the City of Cleveland.

24   Q.   And in this particular

25 communication you're discussing your

Page 63

1   experiences with Xerox you write, most of which

2   have been extremely positive; correct?

3   A.   Yes, sir.

4   Q.   And was that true and accurate at

5   the time you wrote it?

6   A.   Yes, sir.

7   Q.   And is it true and accurate today?

8   A.   Again, my experiences with ACS,

9   slash, Xerox was very positive.

10   Q.   And that's true of the City of

11   Cleveland not just you, Mr. Flask, personally?

12   A.   That's correct.

13   Q.   Okay. I think we are probably at

14   the point where we are ready to break from your

15   30(b)(6) deposition testimony and just cover

16   some topics in your personal capacity.

17   MR. BRENNAN: So -- if that makes

18   sense, unless you have any issues you want to

19   cover or any questions you have?

20   MS. DINEHART: No.

21   MR. NATHANSON: No.

22   Q.   I will just redirect on the

23   30(b)(6) and we will move to your personal

24   capacity.

25   Okay. So, again, now for purposes

Page 64

1   of this testimony, you are taking off your City

2   of Cleveland hat, you are not testifying as to

3   things you only became aware of from other

4   sources, you are testifying from your own

5   personal knowledge, things you saw, things you

6   heard, things you know personally. Does that

7   make sense?

8   A.   Yes, sir.

9   Q.   Okay. You have not been designated

10   as the representative for the City of Cleveland

11   on a number of topics as set forth in the

12   exhibit I showed you, including the negotiation

13   and execution of the contract. Is it fair to

14   say that you are not the best person to speak

15   to those topics?

16   A.   I would agree.

17   Q.   Same with the drafting of the

18   contract, did you draft the contract? Were you

19   involved in the drafting of the contract?

20   A.   No, sir, I was not.

21   Q.   Okay. Did you propose any

22   particular language for the contract, review

23   different versions or was it, in essence,

24   you're shown the final version and you trust

25   other folks within the City of Cleveland

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1   umbrella to give you a contract and you sign as

2   the director of public safety?

3   A.   Yes, sir.

4   Q.   That's how it happened up the

5   ladder, as I am describing it?

6   A.   Yes, sir.

7   Q.   You weren't involved with lay or

8   attorney representatives from the City of

9   Cleveland negotiating aspects of force majeure

10 provisions or termination for convenience

11 provision; is that true?

12   A.   That's true.

13   Q.   Do you know who did take the lead

14 on behalf of the City of Cleveland in terms of

15 negotiating the contract at issue in the

16 litigation?

17   A.   Although there may have been a

18 number of attorneys from the Law Department of

19 the City of Cleveland involved, I believe it

20 was Assistant Director of Law, Jeffrey Marks.

21   Q.   Is that answer also true of the

22 amendment for the contract?

23   A.   Yes, sir.

24   Q.   Was there a layperson who was

25 primarily responsible for the negotiation as to

Page 66

1   the contract and the amendment that you are

2   aware of?

3   A.   I'm not aware.

4   Q.   Do you know if anyone, not from the

5   law department, was involved in negotiating the

6   contract with the City -- with Xerox?

7   A.   I'm not aware.

8   Q.   Okay. Sitting here today, are you

9   aware of the termination for convenience

10   provision in the contract?

11   A.   No, sir.

12   Q.   Are you aware of the force majeure

13   provision in the contract?

14   A.   I've heard the terminology used,

15   but I'm not sure I understand it.

16   Q.   You have heard of force majeure

17   generally or in connection with this contract?

18   A.   In connection with this contract as

19   a result of one meeting that I was in

20   attendance with representatives of Xerox, Jeff

21   Marks, and the representative of the City of

22   Cleveland.

23   Q.   And when did that meeting take

24   place?

25   A.   Sometime in late 2014.

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1   Q.   Following the ballot initiative or

2   before the ballot initiative?

3   A.   Following the ballot initiative.

4   Q.   I'm sorry, I didn't get all the

5   notes. Who do you recall attending that

6   meeting and where did that take place?

7   A.   The meeting was held in the office

8   of the director of public safety. I do recall

9   that Assistant Director of Law, Jeff Marks, was

10   in attendance, as I was, of course,

11   Larry Jones II was in attendance as the

12   representative of the City of Cleveland, along

13   with a number of other individuals, who I don't

14   recall.

15   Q.   On behalf of the City of Cleveland

16   or Xerox?

17   A.   On behalf of Xerox. It was myself,

18   Larry Jones, Assistant Director of Law, Jeff

19   Marks, representatives of Xerox, but I don't

20   recall specifically who they were or whether or

21   not there was any other representatives for the

22   City of Cleveland.

23   Q.   Sitting here today can you name any

24   Xerox employees?

25   A.   No, sir, I cannot.

1   Q.   What do you recall being said about

2 force majeure during that meeting?

3   A.   I know the term was used, but I do

4 not recall the context of how it was used. It

5 was -- my sense was it was a very preliminary

6 conversation --

7   Q.   Okay. Do you know --

8   A.   -- that didn't result in any

9 decisions.

10   Q.   And I cut you off. It did not

11 result in any decisions?

12   A.   That's right.

13   Q.   So, in other words, tell me if I'm

14 inaccurately restating your testimony, but

15 following the ballot initiative there's a

16 meeting between representatives and the City of

17 Cleveland and Xerox that sort of determined

18 where we go from here or what the next steps

19 are, as a result of ballot initiative?

20   A.   That's my understanding. And

21 that's my memory.

22   Q.   Okay. And during that meeting

23 someone uses the term force majeure?

24   A.   That's correct.

25   Q.   And you don't recall whether there

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 1    -- who used it or in what context they used it?

 2         A.    No, sir, I do not.

 3         Q.    And you don't recall what if any

 4    response there was to someone using the term

 5    force majeure?

 6         A.    No, sir, I do not.

 7         Q.    And as a result of that meeting no

 8    decision was made, there was no action plan,

 9    sort of where do we go from here was left an

10    open item?

11         A.    That's correct.

12         Q.    And when did you first become aware

13    of the ballot initiative?  If the ballot

14    initiative is passed in November, when did you

15    first become aware of it?

16         A.    I believe sometime in the spring of

17    2014.  Specific dates, I just -- elude me.

18         Q.    Understood.

19         A.    Yeah.

20         Q.    And how did it come to your

21    attention, the ballot initiative, in the spring

22    of 2014?

23         A.    Through some media reports.

24         Q.    Okay.  In other words, you saw

25    reports that voters were gathering signatures
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1   and potentially putting this on the ballot?

2   A.   That's right.

3   Q.   That didn't come to your attention

4   as a result of anything internal in the City of

5   Cleveland?   In other words, conversation with

6   another City employee or a memo or a document?

7   A.   None that I recall.

8   Q.   When you first heard about that

9   media report, do you recall whether that was a

10 media report on Cleveland dot com, The Plain

11 Dealer, whether it was televised, radio?

12   A.   I don't recall the exact source.

13   Q.   Okay. Regardless of the medium

14 from which you first heard about it, is it fair

15 to say your initial reaction was not positive?

16 In other words, I hope this doesn't get passed

17 because this is a great program and it's

18 helping the City of Cleveland?

19   A.   I was disappointed that it was even

20 being considered.

21   Q.   For the reasons I've articulated?

22   A.   That's correct.

23   Q.   And what did you do, if anything,

24 in response to hearing that the voters might

25 put it on the ballot in November?

1   A.   I remember interacting with the

2   press department, the media department of the

3   mayor's office, providing some information in

4   response to some media inquiries about the

5   program itself.

6   My role was limited in providing

7   statistical information and other things to the

8   press offices in Cleveland.

9   Q.   Okay. And was that a proactive

10 measure on your part or responsive to inquiries

11 from your media coverage?

12   A.   I believe it was reactive on my

13 part.

14   Q.   So, in other words, someone from

15 your internal media folks calls you up, shoots

16 you an e-mail and says, hey, there might be a

17 ballot initiative?

18   A.   It wasn't about the ballot

19 initiative. It was about, what are the facts

20 about the program itself, you know, revenue

21 streams, number of tickets being issued and

22 rates and so forth, that kind of information

23 that the police division and public safety

24 maintained at that time was shared with the

25 press office.

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1   Q.   Okay. But you understood that

2 those inquiries were being made by the media in

3 the spring of 2014?

4   A.   Well, they may have been made even

5 earlier than that, throughout the previous ten

6 years or so that they had been in existence,

7 but certainly spring of 2014, as I remember.

8   Q.   Okay. Which came about as a result

9 of the fact that the voters were, perhaps,

10 putting something on the ballot?

11   A.   It was a petition effort underway.

12   Q.   And other than responding to

13 internal requests from your media folks, did

14 you do anything else to address the possibility

15 that voters might put a ballot initiative?

16   A.   My role significantly changed on

17 February 10th of 2014, so my direct involvement

18 with public safety, other than in a supportive

19 role, was -- my role of public safety was

20 minimalized, February 10th, 2014.

21   Q.   Did you ever talk with Mayor

22 Jackson about the ballot initiative either

23 before or after it was passed?

24   A.   I can say I'm sure that I did, but

25 I don't recall when or the content of the

Page 73

1   conversations.

2   Q.   All right. I want to try to break

3   that down, even if you don't have a memory.

4   Do you recall speaking to Mayor

5   Jackson about the ballot initiative before it

6   was passed?

7   A.   I don't recall.

8   Q.   Do you recall speaking with Mayor

9   Jackson after the ballot initiative was passed?

10   A.   I have spoken with the mayor late

11   last year regarding the absence of the traffic

12   enforcement cameras, certainly in 2015.

13   Q.   And what triggered that

14   conversation?

15   A.   Statistical information that I

16   became aware of that showed a significant

17   increase in pedestrian fatalities within the

18   City of Cleveland.

19   Q.   Did you initiate the conversation

20   with the mayor or did he initiate the

21   conversation with you?

22   A.   I initiated it.

23   Q.   You went to the mayor and you said,

24   Mayor Jackson, now that we don't have cameras

25   there is a greater number of pedestrian

Page 74

1   fatalities and we have to do something about

2   this?

3   A.   I had a conversation with the mayor

4   and the chief of police and the traffic

5   commissioner.

6   Traffic -- pedestrian traffic

7   fatalities were not tracked on a weekly summary

8   report as prepared by the Division of Police,

9   and I recommended to the chief that it be

10   included in the weekly summary report. And I

11   think that's how the conversation involving, at

12   least my briefing, the mayor of what action I

13   had done.

14   Q.   Okay. But in the course of that

15   conversation there was some nexus between the

16   traffic cameras and the fatalities? In other

17   words, you are communicating to the folks at

18   the meeting, we don't have the cameras,

19   fatalities are increased?

20   A.   Well, the conversation was broader

21   than just the cameras. I also saw a

22   significant decrease in traffic enforcement

23   activities by officers of the Cleveland

24   Division of Police. Statistically I saw, in

25   2015, that the number of traffic citations

Page 75

1   issued by officers had decreased about 25

2   percent.

3   So the information, as I remember

4   sharing with the mayor is, we have a two-fold

5   issue here, decreased enforcement by uniformed

6   officers, the absence of traffic cameras and

7   traffic cameras may have led, I had to qualify

8   by saying may have led, to a significant

9   increase of traffic pedestrian fatalities here

10   in the City of Cleveland. Although, I couldn't

11   have any evidence to support, you know,

12   scientific data to support my belief. The two

13   factors took place simultaneously.

14   Q.   And you can't think of other

15   factors that may have resulted in the --

16   A.   I did see that, beside the City of

17   Cleveland, there was an increase in pedestrian

18   fatalities. I saw that the numbers were edging

19   up in the cities and in areas all across the

20   country, so it wasn't unique just to the City

21   of Cleveland.

22   There may have been other factors,

23   including but not limited to, texting and

24   conversations on the phone. There may have

25   been a multitude of factors for which I am not

Page 76

1   aware. But I did see the two statistics that

2   coincided with the rise.

3   Q.   Do you recall when it was that

4   officers started to issue fewer tickets?

5   A.   I do not know the time frame, but I

6   did, during my review, it was last August or

7   September of last year, 2015. I just did a

8   cursory check on some data that was provided by

9   the Division of Police that stood out as being

10   various and historical numbers.

11   Q.   But do you recall when that -- if

12   that decrease started to take place in November

13   of 2014 or subsequent to that?

14   A.   I do not know.

15   Q.   But if I asked you to go back to

16   your computer and pull that data, you believe

17   you would have a report that would show, on a

18   monthly or a weekly basis, the number of

19   citations issued?

20   A.   Cleveland Division of Police has a

21   weekly report that's prepared that identifies

22   the number of enforcement actions taken, along

23   with reported crimes within the City of

24   Cleveland that's prepared on a weekly basis.

25   Q.   And that report exists going back

Page 77

1   years?

2   A.   I do not know how long they have

3   been retained, but the basic format of the

4   report dates back until 1996, 1997.

5   Q.   Okay. And specific as to the --

6   and do you recall when this conversation was

7   that you had with the mayor?

8   A.   I believe late last summer, early

9   fall, 2015.

10   Q.   Do you know whether you have a

11   calendar entry that would reflect that meeting?

12   A.   I would -- I do not recall.

13   Q.   Okay. Would you expect that you

14   would, that's your practice to keep those types

15   of entries?

16   A.   I keep a record of those items,

17   those meetings or discussions or points in time

18   that I may need to refer back to for a

19   statistical reporting for documentation

20   purposes. A normal conversation with the mayor

21   probably would not have been retained for that

22   purpose. But a conversation with the chief

23   probably would.

24   Q.   Okay. So I believe your testimony

25   was, and correct me if I am wrong, it's, you

Page 78

1   know, February of 2014, your role in public

2   safety is getting minimized; correct?

3   A.   That's correct.

4   Q.   So why is it that now we are moving

5   into 2015, you're having conversations with the

6   mayor and other folks about the traffic program

7   and other issues?

8   A.   I was a recipient of the weekly

9   statistical report provided by the Division of

10   Police. And I would give it a cursory review

11   on a weekly basis. And then my review was

12   normally cursory. But when I looked at -- in

13   more detail some statistical matters I saw that

14   the numbers stood out as a significant

15   decrease. So I called the traffic commissioner

16   and had a conversation with a few folks to

17   figure out what was going on and why that

18   decrease had occurred.

19   Q.   And you reviewed those statistics

20   at the time on a weekly basis?

21   A.   I was a recipient, but because of

22   my role and not being directly involved in the

23   oversight of public safety, although I was a

24   recipient, I would review it, I would see it,

25   do a cursory review, it was normally just a

1   normal report. For some reason -- I focused on

2   this one for some reason, I can't tell you why.

3   Q.   Switching topics a little bit.   Is

4   it fair to say that the -- and I'm talking

5   about the time period prior to November of

6   2014, that the Traffic Camera Program, not

7   everyone within Cleveland City Council agreed

8   with the Traffic Camera Program?

9   A.   There were supporters and

10 detractors, but to answer your question

11 directly, there were some who did not support

12 it.

13   Q.   It was a hot button topic

14 politically?

15   MS. DINEHART: I'm sorry, can you

16 repeat that question?

17   Q.   It was a hot button topic

18 politically?

19   A.   No more or no less than some

20 others.

21   Q.   There certainly were some folks

22 within City Council who voted against traffic

23 cameras?

24   A.   Correct.

25   Q.   There were folks, members of City

Page 80

1 Council, who came forward and said I don't want

2 these traffic cameras in my ward?

3   A.   That's right.

4   Q.   Do you recall who the Council

5 members were who voted against the Traffic

6 Camera Program?

7   A.   I do not recall the vote, who voted

8 for or against it.

9   Q.   All right.

10   A.   I do not recall.

11   Q.   Do you recall which Council members

12 came forward and said, please, do not put these

13 in my ward, I don't want them?

14   A.   I remember two that I can recall.

15   Q.   Okay.

16   A.   Councilman Zack Reed, Zachary Reed,

17 and I believe Councilman Terrell Pruitt, in

18 ward one, did not want any cameras installed

19 within his ward.

20   Q.   And when did Councilman Pruitt

21 bring that to your attention?

22   A.   2013.

23   Q.   Do you know when in 2013, before or

24 after the contract renewal?

25   A.   During the discussions with City

Page 81

1 Council on our recommendation to award the

2 contract to Xerox.

3   Q.   And what do you recall Councilman

4 Pruitt saying to you?

5   A.   Department of Public Safety had

6 made a recommendation based on statistical

7 information and accident reporting that a

8 camera may be valuable to a certain area of his

9 ward. I remember him telling me personally

10 that he would get back with me and later he

11 said he wished not to have it in his ward.

12   Q.   Do you recall what words he used or

13 language he used?

14   A.   Other than saying he didn't want

15 them in his ward, I don't remember him

16 specifically saying why. I didn't ask him why.

17   Q.   There was no statement, I find

18 these things to being a nuisance or taxing our

19 residents or I don't believe they promote

20 public safety, any of those things?

21   A.   No, sir.

22   Q.   Okay.

23   A.   No, sir.

24   Q.   And did you ultimately agree with

25 that recommendation or that --

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1   A.   Yes, sir.

2   Q.   And why? Did you conclude that it

3   wouldn't have promoted public safety or you

4   just acceded to the wishes of the Councilman?

5   A.   It was my understanding that the

6   locations were imbedded within the legislation

7   itself. They are required, specific locations,

8   to be approved by Council. So they were

9   imbedded within the legislation to identify

10   specific locations. If they weren't there, the

11   cameras wouldn't be there. So the Council, in

12   order to get Council approval, if the

13   Councilman didn't want it in his ward, we

14   didn't include it.

15   Q.   Your goal was to get Council, the

16   majority of Council, to approve?

17   A.   To support the program, that's

18   correct.

19   Q.   And if that means some Council

20   members don't want them in their ward and the

21   vote was in favor of it, you were in favor of

22   doing that?

23   A.   Yes, I was.

24   Q.   Moving on to Councilman Reed, you

25   recall him indicating that he didn't want

Page 83

1 cameras in his ward?

2   A.   Yes, I do.

3   Q.   And when did he convey that to you?

4   A.   As a result of a Council boundary

5 realignment the previously posted traffic

6 camera location was within his new boundary of

7 his new Council ward, I believe it was on

8 Broadway Avenue. He asked that it be

9 immediately removed from his ward. Councilman

10 Brancatelli says, move it to mine. And I think

11 that action was taken. So it was moved from

12 his ward about five blocks up the street to

13 Brancatelli's ward up Broadway Avenue.

14   I do not remember if that was pre

15 2013 -- although, I believe it was pre 2013, I

16 just don't recall the time frame. But I do

17 remember the action being taken.

18   Q.   And do you recall in specifics what

19 he said to you? Hey, I don't think these

20 things are effective or just a money trap or

21 anything?

22   A.   He was -- I don't believe that he

23 ever had any one on one conversation with me

24 regarding the program. His comments and his

25 position was stated that Council committee

Page 84

 1   hearings are on the floor of Council.

 2   Q.   And do you recall him, during those

 3   communications, taking the position that the

 4   Traffic Camera Program is more about revenue

 5   than it is about public safety?

 6   A.   I recall -- I remember very clear

 7   that he was adamantly and vocally opposed to

 8   the program, but I do not recall his specific

 9   argument.

10   Q.   But you would have recalled it if

11   it dealt with public safety? In other words,

12   if he was making public statements in front of

13   City Council saying, these don't work, they

14   don't stop accidents?

15   A.   I don't recall him ever stating

16   anything even close to that.

17   Q.   Okay. And, in fact, you know, we

18   can all hop on and Google, you know, there have

19   been a number of instances where he was opposed

20   to the program because he thought it converted

21   from being about public safety to being about a

22   revenue source, is that your understanding?

23   A.   I would have to go back and look at

24   some of these articles. I just don't remember

25   the justification for his position. In my

Page 85

1   mind, my memory was, I don't think he ever

2   equated safety with the program, it was other

3   issues. And I'm not sure why those issues were

4   there. I sense and, again I would have to say

5   you would have to qualify this, but his

6   residents in his ward were opposed to it,

7   therefore, he was.

8   Q.   Fair point.

9   A.   Yes.

10   Q.   But regardless of his reasons, you

11 never heard from him or his constituents that

12 this was not an effective public safety tool?

13   A.   No, sir.

14   Q.   Something else was driving his

15 motivation?

16   A.   That's correct.

17   Q.   I will represent to you and the

18 record will reflect it, but Council members

19 Brady and Cimperman also voted against the 2013

20 contract. Does that refresh your memory at

21 all?

22   A.   No, sir.

23   Q.   You don't recall them being opposed

24 to the traffic cameras?

25   A.   I don't recall.

Page 86

1   Q.   All right. You don't recall any

2 conversations with them about whether they were

3 in favor or against the traffic cameras?

4   A.   The only ones that I personally had

5 any one on one dialog with was Councilman

6 Pruitt, Terrell Pruitt.

7   Q.   Okay. Let's step back in time a

8 little bit. Going back to the first traffic

9 camera contract, 2015, before the City of

10 Cleveland takes on the new endeavor it didn't

11 have traffic cameras beforehand. I take it the

12 City of Cleveland does some due diligence to

13 determine, hey, whether or not we should be

14 involved in the business of traffic camera?

15   MS. DINEHART: And, object, just

16 for the record, because you said 2015, I think

17 you mean 2005.

18   Q.   2005. I'm sorry if I misspoke.

19 2005.

20   A.   In 2005 I was the security manager

21 of airport security for Cleveland Hopkins

22 Airport. I didn't assume this role until the

23 contract had already been awarded. So in terms

24 of due diligence and studies or analysis or

25 justifications, I will say that I, as director

Page 87

1   of public safety, I inherited the program that

2   was already in place prior to me coming.

3   Q.   When was the first point in time

4   where you decided, hey, I need to take a look

5   at this and determine whether or not the City

6   of Cleveland should continue a Traffic Camera

7   Program?

8   A.   Sometime after January 1st of 2006,

9   but prior to the first renewal. I just don't

10 recall the time frame.

11   Q.   Okay. Between 2006 and 2011?

12   A.   Well, I think there was a renewal

13 that had been made prior to that. I just don't

14 remember the terms of the original contract,

15 whether or not it was for two years or year by

16 year extension or whether it was four years or

17 five years, but sometime before the first

18 renewal, but I believe it was prior to 2011.

19 Certainly I had an understanding of the program

20 and its value prior to 2011, when we asked for

21 the extension.

22   Q.   And the, sort of, year or date is

23 largely irrelevant, but regardless of when your

24 date took place, before you are going to give

25 consideration to and make a recommendation, do

1   we continue this program or not, you gather

2   empirical evidence to see whether the program

3   was effective or not; correct?

4   A.   We did review the data, in terms of

5   accidents, locations, looked at some

6   statistical information that was provided to

7   us, I believe by accounting, accident location

8   throughout the region. Looked at revenue

9   stream, of course, looked to see the measures

10   to see whether or not there was an increase or

11   decrease, what was happening in the community.

12   We took a number of information

13   into consideration, including accidents,

14   traffic enforcement, citations being issued or

15   notices being issued and the revenue stream, of

16   course.

17   Q.   In the course of doing that review,

18   did you review any data from other

19   jurisdictions outside of the City of Cleveland?

20   A.   Yes, we did.

21   Q.   Do you recall what cities or

22   municipalities you became aware of?

23   A.   We looked at comparable -- I

24   remember looking at comparable -- or similar

25   programs, not comparable, similar programs in

Page 89

1   other cities across other regions throughout,

2   look at the effect of this, how they were

3   utilized and the technologies they were

4   utilizing for the programs, but prior to 2011.

5   Q.   During the course of that review it

6   came to your attention that there were certain

7   cities who had enacted or began a Traffic

8   Camera Program, but later disbanded it as a

9   result of voter initiative city or state wide?

10   A.   I don't recall reviewing any data

11   for any communities that had a program

12   disbanded. I just don't recall.

13   Q.   And I don't want to limit it to

14   data.

15   A.   Yes.

16   Q.   But you were generally aware at

17   that point in time that there had been

18   instances in the United States where

19   municipalities had begun a Traffic Camera

20   Program only to see the Traffic Camera Program

21   cease following a voter initiative city or

22   state wide?

23   A.   I'm aware that programs had been

24   eliminated, but not why. I can't answer that

25   question directly and articulate any specific

Page 90

1   knowledge or incident that I had regarding a

2   program being abolished because of legislative

3   initiative. I'm not aware.

4   Q.   But you were certainly aware, prior

5   to 2013, that the City of Cleveland's neighbor,

6   East Cleveland, had a legislative measure to

7   ban or limit the use of traffic cameras?

8   MS. DINEHART: Objection to that

9   question.

10   A.   I don't remember. I just don't

11   remember.

12   Q.   Are you aware, sitting here today,

13   that other municipalities, other than the City

14   of Cleveland, in this community, whether it's

15   South Euclid, East Cleveland or going a little

16   further east, Ashtabula, had limited or banned

17   the use of traffic cameras?

18   A.   I don't know. I know that some

19   communities continue to use them, but I don't

20   know under which authority or policy in which

21   they continue to use them. Like Newburgh

22   Heights, I have not followed it closely since

23   the voter amendment in 2014.

24   Q.   But moving back to the beginning of

25   2014, when you first heard about the City of

Page 91

1   Cleveland ballot initiative, I take it you

2   weren't shocked to find out, oh, my goodness,

3   voters might not like this and might try to

4   limit it or eliminate it?

5   A.   Well, I was both surprised and, as

6   I stated earlier, disappointed.

7   Q.   Why were you surprised? It never

8   occurred to you that voters may not like the

9   traffic cameras?

10   A.   I know that some citizens, some

11   people who were cited were displeased with

12   getting a violation notice, but I thought the

13   overwhelming -- my opinion is that the program

14   had such value that people would support it.

15   Q.   So going into November of 2014 you

16   thought the ballot initiative would fail?

17   A.   I was surprised that it had got

18   that far.

19   -   -   -   -   -

20   (Thereupon, Plaintiff's Exhibit 4,

21   NPR Article, was marked for purposes

22   of identification.)

23   -   -   -   -   -

24   Q.   I will show you what we will mark

25   for purposes of identification Plaintiff's

Page 92

1   Exhibit 4, which for purposes of identification

2   is an NPR Article dated February 22nd, 2014.

3   And if you turn to the second page

4   of this exhibit, if you look in the lower

5   left-hand block, it says, here are cities that

6   rejected traffic cameras in 2011, Albuquerque.

7   Ashtabula. Bellingham, Washington. Dayton,

8   Texas. East Cleveland, Ohio. If you turn the

9   page, Garfield Heights, Ohio. Longview,

10 Washington. Monroe, Washington. South Euclid,

11 Ohio. Do you see that?

12   A.   Yes, sir.

13   Q.   Is it fair to say that you would

14 have known on or about the time of this article

15 that voters in other states --

16   A.   I was familiar with Garfield

17 Heights, as I see the name here I remember

18 following that matter in the City of Garfield

19 Heights.

20   Q.   So you knew about it at the time,

21 contemporaneously; correct?

22   A.   Yes, sir, that's true.

23   Q.   So in about 2011 you knew that

24 another community in Cuyahoga County had banned

25 or limited the use of traffic cameras?

Page 93

1   A.   I am familiar with Garfield

2 Heights, that's correct.

3   Q.   You were familiar with that, in

4 other words, the voters banning the use of

5 traffic cameras?

6   A.   That's correct.

7   Q.   That risk that possibility that

8 voters in Cleveland might try to limit or ban

9 the use of traffic cameras, is it fair to say

10 that given the overall benefits of the traffic

11 camera you thought it better to have the

12 program and take what you hoped was a de

13 minimus risk, that it might be banned or

14 limited?

15   A.   You will have to restate the

16 question, because --

17   Q.   Yes.

18   So, obviously, from Garfield

19 Heights you knew that it was within the realm

20 of possibility that like Garfield Heights, City

21 of Cleveland could ban traffic cameras, that's

22 voters?

23   A.   That's correct.

24   Q.   When entering into a contract with

25 Xerox in 2013, you're going to look at all

Page 94

1 different factors, is the contract going to

2 benefit public safety, is there a possibility

3 it could be eliminated after a year, and on

4 balance, it would have been your mindset that

5 given the tremendous benefit of public safety

6 of the Traffic Camera Program, we are willing

7 to take the relatively low risk that the voters

8 might not approve of this measure going

9 forward?

10   A.   Again, you are asking me my opinion

11 as former director; correct?

12   Q.   Correct, yes.

13   A.   I believe that the program's value

14 was, to the extent that if there was a risk,

15 again, if there was a risk, and I'm not sure

16 that there was at this time, at least in my

17 mind, doing the action that they took, the

18 program had significant value and should

19 proceed.

20   Q.   The value of the program exceeded

21 any potential risk that the voters might try to

22 end the program?

23   A.   In my opinion it did.

24   Q.   Other than -- I think I refreshed

25 your memory with Garfield Heights, can you

1   think of other municipalities that you knew of

2   in 2011 or 2012 that banned traffic camera?

3   A.   I can't tell you why I focused on

4   Garfield Heights. It's close to my home and

5   those kind of issues, but I just remember

6   following it and reading a certain amount of

7   media coverage on it at that time. But other

8   than Garfield Heights, I don't remember any

9   other communities identified in this article.

10   Q.   Moving into post November, before

11   2014, sitting here today, are you aware of why

12   the City of Cleveland terminated the Traffic

13   Camera Program?

14   A.   Well, I have an understanding of

15   what I believe to be the reason.

16   Q.   And let me stop you there.

17   A.   Yeah.

18   Q.   Because I don't want any

19   understanding that came from your attorneys.

20   Do you have an understanding, other

21   than from lawyers, as to why the Traffic Camera

22   Program stopped?

23   A.   Voters made a decision.

24   Q.   And what's your understanding of

25   what that decision meant?

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1   A.   That prohibited the use of traffic
2   cameras for enforcement purposes in the City of
3   Cleveland.
4   Q.   And do you have an understanding of
5   whether or not the City of Cleveland, following
6   the ballot initiative, could continue to pay
7   Xerox monies under the contract?
8   A.   Restate that question for me,
9   please.
10   Q.   I will try to say it again and if
11   it doesn't make sense --
12   A.   Okay.
13   Q.   -- I will ask another question.
14   But do you have an understanding as
15   to whether or not, following that ballot
16   initiative, the City was prohibited from paying
17   Xerox monies under the contract?
18   A.   No.
19   Q.   You don't have an understanding one
20   way or the other?
21   A.   I do not have an understanding.
22   Q.   Okay. Do you have any
23   understanding as to why Xerox hasn't been paid
24   by the city of Cleveland following that ballot
25   initiative?

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1   A.   I'm trying to respond to this

2   without saying it's my understanding. The City

3   canceled the contract and that ended the

4   program.

5   Q.   Okay. And are you aware that

6   there's a provision in the contract, a

7   termination provision, that says if the City

8   cancels the contract, as you testified, the

9   City has to pay Xerox a termination fee?

10   A.   I'm not aware.

11   MS. DINEHART: Objection. Asked

12   and answered.

13   Q.   You are not aware of that?

14   A.   No. No, sir.

15   Q.   You weren't in any discussions,

16   involved in any discussions about whether or

17   not the City of Cleveland should pay that

18   termination fee?

19   A.   Other than the meeting, which I

20   articulated with the representatives from Xerox

21   following the vote, was in a meeting or

22   discussion that I was a participant.

23   Q.   Did that termination fee come up in

24   that meeting?

25   A.   I don't recall.

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1   Q.   When do you recall it first coming

2   to your attention that there may be a

3   termination fee in the contract?

4   A.   Sometime after Xerox initiated the

5   litigation.

6   Q.   And how did that come to your

7   attention?

8   A.   I believe a consultant for -- a

9   consultant for Xerox called me and asked me to

10 help facilitate a meeting so he could put the

11 matter to rest. I shared that information with

12 the director of public safety -- not the

13 director of public safety, the Director of Law,

14 Barbara Langhenry, that I had received a call

15 and was asked to help facilitate a meeting.

16   Q.   Who was the consultant?

17   A.   Eddie, E-D-D-I-E. Eckart,

18 E-C-K-A-R-T.

19   Q.   And I just want to make sure we

20 have a timeline of when this would have

21 occurred.

22   A.   Well, I can --

23   Q.   And, unfortunately, I only have the

24 benefit of an amended complaint, but Xerox

25 filed an amended complaint in August and

Page 99

1   probably the original complaint in June of

2   2015, would it have been closer to the time of

3   the --

4   A.   I remember --

5   Q.   -- ballot initiative?

6   A.   -- a conversation that I had with

7   Eddie Eckart, because I was informed of the

8   same, and I believe it was in April of 2015.

9   Q.   And what did Eddie say to you?

10   A.   That it was a goal, I think in his

11   mind, again, the exact conversation was that

12   they were hopeful that the City and Xerox could

13   come to some kind of resolution. And I thanked

14   him for his call. I told him where I was at.

15   Told him I would get back with him or someone

16   would get back and I shared the information

17   with the Director of Law, Barbara Langhenry.

18   Q.   I don't want to know what you spoke

19   about with Barbara.

20   A.   Okay.

21   Q.   But was it Eddie that brought up

22   there was a termination fee in the contract?

23   A.   No, I am sure he did not.

24   Q.   Your knowledge of the termination

25   fee came from the law department, I don't want

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 1    to know the substance of those conversations,

 2    but that's where it came from?

 3         A.    I believe so, but I can't state

 4    specifically whether it was the law department

 5    or from another public safety source.  I did

 6    learn of it, but I don't remember the source of

 7    that information.

 8         Q.    And after you learned of it, did

 9    you go back to review the contract to see what

10    the contract said about a termination fee?

11         A.    No, sir, I did not.

12         Q.    Sitting here today, do you have an

13    understanding of the termination provision?

14         A.    No, sir, I do not.

15         Q.    I take it you didn't make any

16    recommendations to anyone within the City of

17    Cleveland to pay or not pay a termination fee?

18         A.    No, sir.

19         Q.    I'm sorry, it was a double

20    negative.  My statement is correct?

21         A.    I did not make a recommendation to

22    anyone regarding the settlement of this

23    litigation.

24         Q.    Is it your understanding that after

25    the ballot initiative the cameras couldn't be
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 1   used for surveillance?
 2        A.    I don't recall that ever being
 3   discussed.
 4        Q.    Okay.  But you knew that the
 5   cameras had that capacity to be used for
 6   surveillance?
 7        A.    That's correct.
 8        Q.    And that the ballot initiative was
 9   being driven by citations rather than
10   surveillance?
11        A.    It was being driven by enforcement,
12   that's correct.
13        Q.    And is it fair to say that the
14   cameras could have continued to operate and
15   used for surveillance?
16        A.    I believe the technology would
17   support that.
18        Q.    But you didn't have any discussions
19   with anyone within the City of Cleveland to
20   say, hey, the surveillance aspect of these
21   cameras are valuable, let's keep them on even
22   if they are not issuing citations?
23        A.    I did not.
24        Q.    They could have been used that way?
25        A.    I believe it's possible they could
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1   have.

2   Q.   And, as you have previously

3   testified, there some benefits to the cameras,

4   even if they are not operable? In other words,

5   folks see the signs, they see the cameras, they

6   slow down, they stop running red lights;

7   correct?

8   A.   I believe that there is -- if

9   there's consequences for failing to adhere to

10   the signage and speed limit.

11   Q.   Well, not only are there

12   consequences, but there's -- it impacts driver

13   activity, whether or not you receive a

14   citation? In other words, I'm going to slow

15   down if I see a sign, I'm not going to run a

16   red light if I see a sign or a camera?

17   A.   I believe that it has an impact if

18   there's a linkage between the signage and the

19   potential consequences by failing to adhere to

20   the speed limit or red light.

21   Q.   But not everyone who eventually

22   slows down in a traffic zone receives a

23   citation?

24   A.   That's right.

25   Q.   There an impact of seeing the sign

Page 103

1   and deciding, I'm going to hit the brakes, I'm

2   not going to go 35 in a school zone, I'm going

3   to go 20?

4   A.   The signage is there without any

5   potential risk to the motorist for failure to

6   adhere to it.   There is no follow through, no

7   consequences.   I don't think -- the sign loses

8   its effect.

9   Q.   Well, do you know what percentage

10   of the drivers in the City of Cleveland

11   actually know whether or not there's been a

12   ballot initiative and impact to the traffic

13   cameras?

14   A.   I do not.

15   Q.   Fair to say there is a substantial

16   portion of folks who, if you left up the signs

17   and cameras and didn't have the cameras

18   operative, would still say, oh, my goodness, I

19   need to slow down, I need to not run a red

20   light?

21   A.   Might.

22   Q.   Would that be your best

23   understanding of what would likely happen if

24   there was a significant percentage of drivers

25   who would see the cameras, see the signs and

Page 104

1   not violate City laws?

2   MS. DINEHART: Objection.

3   A.   It would be a guess on my part. I

4   couldn't respond with any kind of certainty to

5   that possibility.

6   Q.   Okay. But you do know that not

7   every driver receives a violation, that there

8   are drivers who don't receive a violation were

9   encouraged by the signs and the cameras to

10 adhere to the traffic laws?

11   MS. DINEHART: Objection.

12   A.   I believe that it is the placement

13 of the traffic cameras, the warning signs, and

14 the program itself had an impact on individuals

15 reducing their speed -- speed within the City

16 of Cleveland.

17   Q.   Following the ballot initiative,

18 did you give any consideration to whether or

19 not the cameras and signs should remain in

20 place as a deterrent to speeding and running

21 red lights?

22   A.   No. I did not. I was not in a

23 role at that time to -- I was not in a role at

24 that time to make that kind of recommendation

25 if I had agreed.

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1   Q.   Do you recall any conversations on

2   that topic?

3   A.   I recall none.

4   Q.   And I should expand it. Any

5   communication on that topic, whether they were

6   oral or in writing?

7   A.   None.

8   Q.   Other than the communication you

9   had with Mr. Eckart, which was passed along to

10   the City of Cleveland following the ballot

11   initiative, do you recall any conversations

12   about resolving the conflict with Xerox, other

13   than with counsel?

14   A.   None.

15   Q.   Okay. And I don't need to show

16   you, but I will represent to you there were a

17   number of pieces of correspondence exchanged

18   between Mr. Jones and others within the City of

19   Cleveland on the one hand and Xerox on the

20   other, following the initiative. I don't see

21   you copied on those communications, but I just

22   want to confirm that you weren't receiving

23   those communications or weighing in on those

24   communications?

25   A.   I had no memory of receiving any

Page 106

1   correspondence post 2000 -- the vote, the

2   electoral vote. I don't receive -- other than

3   my limited contact with Eddie Eckart, none.

4   Q.   Okay. Similarly, following the

5   initiative, you weren't involved in any

6   discussions or decisions about, we should not

7   pay Xerox, we should pay Xerox a termination

8   fee or we should pay Xerox on a monthly basis

9   through the life of the contract?

10   A.   No, sir.

11   Q.   Okay. When did you first learn

12   about this litigation?

13   A.   Although I may have anticipated

14   some litigation, I don't believe I learned

15   about it until sometime after it was initiated

16   by Xerox. I just don't remember the time

17   frame.

18   Q.   Okay. And what effort, if any,

19   have you taken to preserve documents that may

20   be relevant to the litigation?

21   A.   Archiving in my calendar those

22   notes and information that I may have had some

23   relationship to this litigation.

24   Q.   When you say archiving, what did

25   you do?

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1   A.   Again, referring back to my
2   calendar and Outlook, just maintaining a record
3   of any conversations or contact that I may have
4   had regarding litigation.
5   Q.   Just various organizations have
6   different retention policies --
7   A.   Okay.
8   Q.   -- does your e-mail have an auto
9   delete function?
10   A.   I do not believe so. I don't --
11   anything deleted, I think the individual would
12   have to delete themselves.
13   Q.   Does there come a point in time
14   where your e-mails rollover to an archive
15   rather than --
16   A.   I believe that they're archived
17   after the end of the calendar year is my
18   understanding.
19   Q.   Okay. So all of your e-mails in
20   2015 get archived beginning of 2016?
21   A.   I --
22   MS. DINEHART: If you don't know,
23   don't guess.
24   A.   Yeah. I moved from one safety
25   system to a city wide e-mail system server. I

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 1   don't know what happens, what's available prior

 2   to 2014.  I just don't know.

 3         Q.    Did you keep a hard copy file, as

 4   it relates to the Xerox contract for the

 5   Traffic Camera Program?

 6         A.    I did not personally maintain any

 7   files.

 8         Q.    Is it your practice to take notes

 9   during meetings?

10         A.    Generally I will.

11         Q.    Do you have any notes on your

12   meetings with Xerox or the City of Cleveland

13   relative to the Traffic Camera Program?

14         A.    Nothing that would not have been

15   retained in my Outlook system.

16         Q.    Just so I understand your practice,

17   is it your practice to take handwritten notes,

18   convert those notes to a written format?

19         A.    Or recollections that I have had

20   from the meeting, just a synopsis of the

21   meeting that I would retain within my Outlook

22   calendar.

23         Q.    Once you are done transferring your

24   handwritten notes to the electronic format you

25   dispose of those handwritten notes?
```

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1   A.   If I took any, usually, it was

2 mostly recollection. This was the topic, this

3 was the conversation, this was the program,

4 this was the agenda, and put it in my Outlook.

5   Q.   Are you aware that following the

6 ballot initiative that Xerox continued to

7 provide services for the City of Cleveland?

8 Are you aware of whether tickets continue to

9 get processed and paid following the ballot

10 initiative?

11   A.   I do remember that for some period

12 of time following the ballot initiative that

13 tickets were still being provided to the

14 Division of Police and the clerks of courts for

15 some period of time.

16   Q.   Do you know whether that continues

17 to today?

18   A.   No, sir, I do not.

19   Q.   Were you involved in any

20 discussions or decisions relative to, should

21 the City of Cleveland continue to process

22 tickets following the ballot initiative?

23   A.   I believe that discussion was held,

24 but I was not a participant in it.

25   Q.   How did it come to your attention

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1   that such a discussion was held?

2   A.   It may have been third-hand

3   information from the Department of Public

4   Safety, Director of Public Safety or someone

5   within Public Safety, that I just don't recall

6   whom in the timeline format.

7   Q.   Regardless of the whom or the time,

8   was the substance of the communications, hey,

9   we are going to continue to process tickets and

10   collect revenue?

11   A.   I don't recall that conversation.

12   Q.   What do you recall about the

13   substance of the conversations?

14   A.   That some tickets or some notices

15   that had been issued prior to are violations

16   that had been identified prior to the ballot

17   initiative were waiting to be processed, they

18   were in the queue for possessing by either the

19   Division of Police or Clerk of Courts. So

20   there was a period of time where there was a

21   backlog of citations or notices prior to the

22   ballot that were in the queue that violations

23   had been identified that were waiting to either

24   be processed by police or the Clerk of Courts.

25   Q.   Are you aware of Xerox having any

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1   role in the processing of those violations

2   following the ballot initiative?

3   A.   I know what their -- my

4   understanding was their role, of course, was to

5   provide information to the Division of Police

6   for validation purposes and to the Clerk of

7   Courts. So they had a specific role in that

8   and they did provide information that were

9   violations to the Division of Police, the Clerk

10 of Courts, ultimately the Clerk of Courts.

11   Q.   Following the ballot initiative?

12   A.   Prior to, I'm not sure about

13 afterwards.

14   Q.   So sitting here today, you don't

15 know whether Xerox continued to provide

16 services following the ballot initiative and as

17 a result the City of Cleveland received

18 millions of dollars in revenue at a time when

19 the City of Cleveland wasn't paying Xerox?

20   MS. DINEHART: Objection. Compound

21 question.

22   A.   I'm not aware of that.

23   Q.   Are you surprised to learn that

24 fact, that the City of Cleveland wasn't paying

25 Xerox, Xerox continued to provide services and

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```
 1    as a result that Cleveland made millions of

 2    dollars in revenue?

 3         A.    No.

 4              MS. DINEHART:  Objection.  Compound

 5    question.

 6         A.    I don't know that.  I don't know

 7    that.

 8         Q.    Whether or not you know it, does

 9    that surprise you?

10         A.    First of all, I don't believe it,

11    but I don't want to challenges anybody's

12    veracity here.  I don't believe it.

13         Q.    Because that wouldn't make sense?

14         A.    That's correct.

15         Q.    I'm sorry?

16         A.    That's correct.

17              MR. BRENNAN:  Why don't we take a

18    quick five-minute break?

19              (Short recess had.)

20         Q.    Sir, just so you are aware,

21    document production has not yet been completed

22    in the litigation, so there is a possibility I

23    would ask to continue your testimony at some

24    later date, but, you know, as of right now this

25    concludes your testimony for today.  I
```

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1 appreciate your time and your cooperation.

2   A.   Thank you.

3   Q.   Thank you.

4   MS. DINEHART: At this point you

5 have the opportunity to either read the

6 transcript of the deposition or trust that

7 Christine has done a wonderful job. Hooray.

8 When you do have the opportunity to read you

9 can correct basic typographical errors, but you

10 can't change your testimony. We would

11 recommend at this point that you waive, but it

12 is up to you. What would you like to do?

13   THE WITNESS: I would like to

14 waive.

15   (Deposition concluded at 11:54 a.m.)

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1 Whereupon, counsel was requested to give

2 instruction regarding the witness's review of

3 the transcript pursuant to the Federal Rules.

4

5   SIGNATURE:

6 It was agreed by and between counsel and the

7 parties that the reading and signing of the

8 transcript of said deposition, be and the same

9 is hereby waived.

10

11   TRANSCRIPT DELIVERY:

12 Counsel was requested to give instruction

13 regarding delivery date of transcript.

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1   REPORTER'S CERTIFICATE

2   The State of Ohio,   )

3   SS:

4   County of Cuyahoga.   )

5

6   I, Christine M. Emery, a Notary

7   Public within and for the State of Ohio, duly

8   commissioned and qualified, do hereby certify

9   that the within named witness, MARTIN L. FLASK,

10   was by me first duly sworn to testify the

11   truth, the whole truth and nothing but the

12   truth in the cause aforesaid; that the

13   testimony then given by the above-referenced

14   witness was by me reduced to stenotypy in the

15   presence of said witness; afterwards

16   transcribed, and that the foregoing is a true

17   and correct transcription of the testimony so

18   given by the above-referenced witness.

19   I do further certify that this

20   deposition was taken at the time and place in

21   the foregoing caption specified and was

22   completed without adjournment.

23

24

25

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1   I do further certify that I am not

2   a relative, counsel or attorney for either

3   party, or otherwise interested in the event of

4   this action.

5   IN WITNESS WHEREOF, I have hereunto

6   set my hand and affixed my seal of office at

7   Cleveland, Ohio, on this 15th day of

8   April, 2016.

9

10

11

12

13   _____

14   Christine M. Emery, Notary Public

15   within and for the State of Ohio

16

17   My commission expires January 19, 2019.

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[& - allows]   Page 1

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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